

REMARKS

In response to the Examiner's Election/Restriction Requirement, the Applicant hereby elects the claims of Group II (that is, claims 21-30) for examination. As indicated above, claims 1-20 have been withdrawn from the present application.

The requirement for restriction as set forth in the Office Action is respectfully traversed. The Applicant considers the invention to be defined by claims 1-30.

Section 121 of the Patent Statute allows a restriction requirement in the event that two independent and distinct inventions are claimed in a single patent application. It is not seen how the inventions set forth in the two claim groups set forth by the Examiner are independent and distinct. There is a clearly disclosed relationship between the two inventions, that is, an etching method and an etching apparatus. Thus, the inventions are dependent.

As to the distinctiveness between the two inventions, the Examiner sets forth two tests, i.e., that the process as claimed can be practiced by another materially different apparatus or by hand, or the apparatus as claimed can be used to practice another and materially different process. The Examiner's comment that, "the first signal representing the actual gas concentration produced in the method can be acquired by any conventional means such as a gas spectrometer" is not persuasive or even demonstrative as to how the claimed process can be practiced by another materially different apparatus, or how the claimed apparatus can be used to practice another and materially different process. The Examiner has merely set forth an alternative to one step in the method claim. Using a known alternative for one process step does not satisfy the requirement that the process as claimed can be practiced by another materially different apparatus.

Also, distinctiveness cannot be based on different fields of search. The Examiner has indicated that Group I is classified in class 438, subclass 460, and Group II is classified in class 156, subclass 345+. The assignment of classes and sub-classes is merely an administrative tool employed by the Patent and Trademark Office to classify patent applications and facilitate the searching of prior art. There is nothing in the Statute that refers to administrative convenience as a basis for a restriction requirement. The search required by Section 131 must be conducted to identify all relevant art, no matter where and how that art is classified.

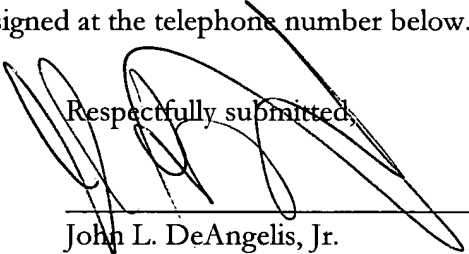
In any case, to be responsive to the Examiner's restriction requirement and to move the case along to examination and issue, the Applicant has elected Group II as set forth above. The

Applicant reserves the right to file a divisional application or take other action as appropriate to protect the invention as set forth in the withdrawn claims.

It is respectfully requested, however, that the restriction requirement be withdrawn and that a complete examination of the application in compliance with Section 131 be performed.

The undersigned notes that on January 22, 2005, he received a call from Examiner Olivia Luck regarding this case and specifically requesting that an election be made in response to a restriction requirement. During that telephone call the undersigned elected Group II, with traverse. It is not clear why an additional restriction requirement has been issued, although it is noted that the current Examiner is not the Examiner who telephoned the undersigned.


If a telephone conference will assist in clarifying or expediting this Amendment, the Examiner is invited to contact the undersigned at the telephone number below.


Respectfully submitted,

John L. DeAngelis, Jr.
Reg. No. 30,622
Beusse Brownlee Wolter Mora & Maire, P.A.
390 N. Orange Ave., Suite 2500
Orlando, FL 32801
(407) 926-7710

CERTIFICATE OF MAILING

I HEREBY CERTIFY that this Response to Election/Restriction Requirement is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 14th day of April, 2005.


Pamela A. Pagel